GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT.

Labour Dispute:—Industrial Dispute between the workmen and the management of M/S. Mysore Timber Saw Mills, Kulshekar Mangalore.

Award of the Labour Court, Mangalore-published.

Read the following papers:

(1) Letter No. A/ID.1/70-71, dated 11th December 1970 from Sri Mohd. Hameeduddin Khan, Presiding Officer, Labour Court, Mangalore.

BEFORE THE LABOUR COURT AT MANGALORE

Dated he 25th August, 1970.

Reference (ID) LCM) No. 1 of 1970.

Present:

Mohd. Hameeduddin Khan, B.Sc., LL.B.
Presiding Officer

Between

Sri N. Sanjeeva, Band Saw Operator, C/o. The Cashewnut Workers' Union, Maidan Road, Mangalore. *I Party.*

and

The management of M/s. Mysore Timber Saw Mills, Kulshekar, Mangalore. *II Party.*

The Government of Mysore being of opinion that an industrial dispute exists between the workman and the management of M/s. Mysore Timber Saw Mills, Kulshekar Mangalore, referred it under Sec. 10(1)(c) of the Industrial Dispute Act, 1947 *vide* Order No. FCL 946 LLD 69, dated 19th January 1970 to this Labour Court at Mangalore for adjudication on the following points of dispute:

I. Is the management of Mysore Timber Saw Mills, Kulshekar, Mangalore, justified in discharging Sri N. Sanjeeva, Band Saw Operator, with effect from 31st August 1969 ?

II. If not, to what relief is the said worker entitled to ?

2. On receipt of the reference on 22nd January 1970 it was registered as Reference (ID) (LCM) No. 1 of 1970 on the file of this Court, and notices were issued to both the parties to file their claim and counter statements. On 12th February 1970 Sri H. Umanath Nayk filed authorisation on behalf of the I Party and took time to file the claim statement. Sri U.P. Mallya filed authorisation to represent the II Party, but Sri H. Umanath Nayak opposed the authorisation in favour of Sri U.P. Mallya filed by the II Party to represent it on the ground that the II Party is not the member of the General Managements Association, Mangalore whose Vice-President is Sri U.P. Mallya. However, after hearing arguments with regard to the competency of Sri H. Umanath Nayak to represent the I Party and of Sri U. P. Mallya to represent the II Party, orders were passed on 9th April 1970 and on 6th May 1970 respectively. On 9th April 1970 Sri H. Umanath Nayak was held competent to represent the I party workman and the claim statement filed on 3rd April 1970 which was signed by the workman was held valid. On 6th May 1970 Sri U. P. Mallya was held competent to represent the II Party under Sec. 36 (2) (a) of the Industrial Disputes Act, 1947. Sri U. P. Mallya filed the counter statement on 28th May 1970. The additional issues were also framed on that day in view of the pleadings.

3. The claim of the I Party workman as per the claim statement is that the I Party workman was working as a Band Saw Operator with the II Party management for the past three years and all along discharged his duties to the best of his abilities. The II Party management is engaged in Timber trade and also runs a saw mill for cutting and sawing timber to sizes and employees about 20 workers excluding the workers engaged for loading and unloading of timber. It is stated that due to prevailing working conditions under the management the I Party workman tried to form a union of the workmen under the management. The management took serious note of it and took steps to victimise the workman at any cost. The management issued a show cause notice dated 23rd July 1969 levelling certain charges alleged to have been committed by the workman on 19th July 1969 at about 2.15 A.M. on the basis of a complaint of Sri A. Raghavan. The charges framed are fictitious and frivolous, in that the charges are are based on suspicion. The workman submitted an explanation dated 28th July 1969 denying all the charges and requested the management to issue him a copy of the report alleged to have been given by Sri A. Raghavan of Malnad Timber Co. But this prayer was never heeded by the management. It is stated that the alleged conduct in the show cause notice is of a grave nature but it took four days to issue a show

cause notice. The delay itself explains that the allegations are fabricated. It is stated that the explanation submitted by the workman was rejected by the management straightaway. But no proper investigation was made and a charge-sheet dated 4th August 1969 was issued calling upon the workman to participate in the enquiry on 11th August 1969. The workman replied to the charge-sheet as per his letter dated 22nd August 1969 requesting the management once again to issue him a copy of the complaint said to have been given by Sri A. Raghavan and to furnish a list of witnesses and copies of the documents that the management would like to rely on in the enquiry proceedings. Further the workman objected to the enquiry being conducted by a lawyer who is not at all connected with the management. It is stated that the so-called enquiry said to have been conducted by the enquiry officer is nothing but a farce. No proper opportunity was given to the workman to defend himself. The enquiry said to have been conducted is against the principles of natural justice. The final order dated 31st August 1969 discharging the workman with effect from 1st September 1969 does not state whether the alleged charges were proved or not. The recommendation of the enquiry officer is perverse and is liable to be set aside. The discharge of the workman is unlawful, unjustified and *mala fide*. This action was taken against the workman for his trade union activities and it is a case of victimisation. The workman was in the services of the management for the past three years, and discharged his duties to the best of his abilities, with an unblemished record of service. The order is by way of punishment. It is stated that under the circumstances of the case the punishment is excessive and not *bonafide*. Lastly it was prayed that the discharge order of the management dated 31st August 1969 may be set aside and an award may be passed directing the management to reinstate the workman with full back wages with costs.

4. In the objections statement of the II Party it is pleaded that it is emphatically denied that the service of the I Party workman was terminated for trade union activities. The II Party management was not aware of any trade union activities of the I Party workman or whether he was a member of any trade union. The management has held a proper enquiry into the charge of misconduct against the I Party workman in accordance with the principles of natural justice. The workman was given all opportunities to defend himself. It was on the basis of this enquiry that the I Party Workman's services were terminated. The workman has fully participated in the enquiry. There was no question of giving a copy of the report to the I Party workman as Sri A. Raghavan had not given any written report to the II Paryt management. The charge-sheet itself contains the full gist of the report

made by Sri A. Raghavan. Therefore, no prejudice is caused to the workman. The termination of service of the workman was lawful and justified, and not by way of victimisation. Lastly it was prayed that the reference may be rejected with costs of the II Party. In view of these pleadings the following additional issues were framed on 28th May 1970 apart from the points of dispute :—

(1) Whether the II Party management after holding a proper enquiry into the charge of misconduct against the I Party workman in accordance with the principles of natural justice and giving all opportunity to the I Party workman to defend himself, terminated his services on the basis of this enquiry?

OR

Whether the II Party management is guilty of victimisation of the I Party workman for his trade union activities and as such the order of discharge is unjust, unlawful and *mala fide*?

(2) Whether the punishment of termination of service of the I Party workman is excessive and not *bona fide*?

(3) What Award?

5. On 25th July 1970 one witness, *i.e.*, Sri U. P. Mallya examined himself on behalf of the II Party as M.W. 1 and got marked Exhibits M. 1 to M3. During the evidence of M.W. 1 three documents were got marked as Exhibits W. 1 to W. 3 on behalf of the I Party. The evidence of the II Party was closed on that day. On 4th August 1970 the worker examined himself as W.W. 1, and during his evidence two documents were got marked as Exhibits W. 4 and W. 5. The evidence of the I Party was closed on that hearing. Arguments of the learned representatives for the Parties were heard on 18th August 1970.

6. Sri U. P. Mallya, the learned repesentatives for the II Party cited the ruling reported in (1963-64) 25 F.L.R. 88 and argued that the principles laid down in this ruling are to test whether the domestic enquiry held is proper or not. He contended that the enquiry proceedings are before this Court and they were spoken to by M.W. 1 that the notice of enquiry and charge-sheet were gien to the I Party workman and the worker as admitted that the has fully participated in the enquiry and cross-examined the management's witnesses and given his evidene also. Thus the principles laid down in the said ruling are fully satisfied in this case. The plea of the I Party that the enquiry was a farce has no merits. Because the entire incident was narrated in the charge-sheet

and the show cause notice. There was no written report. If there were any written report, a copy of it would have been certainly given to the worker. But even if it is taken for granted that there was any written report, the enquiry officer did not reply upon it because it was not before him. Therefore,the non-furnishing of a copy of such an alleged report does not vitiate the domestic enquiry. In support of his contention he relied upon the rulings reported in 1964 (II) LLJ SC 139 and 18 F.J.R. 124. He furhter argued that on the ground that no reply was given to Ex.W. 3 it cannot be assumed that the enquiry was vitiated because it was sent to the enquiry officer for information and reply was not expected of it. He argued that a plain reading of the termination order would show that the enquiry officer recommended the termination of the services of the I Party workman, and acting on that recommendation the management has terminated the services of the worker. He further contended that the plea of victimisation on the ground of his being an active member and for his trade union activities, *i.e.*, canvassing for the membership and holding the meeting in the party's office is devoid of merits. Because the I Party workman has admitted in his deposition that his trade union activities were not brought to the notice of the management. He argued that there is no evidence to suggest that the management was aware of his trade union activities. Therefore, the plea of victimisation cannot stand. The additional issue No. 1 should be answered in favour of the II Party and the reference should be rejected. He further relied upon the ruling reported in (1961-62) 20 F.J.R. Punjab 469. On the other hand, Sri H. Umanath Nayak, the learned representative for the I Party, argued that the charges levelled against the I Party workman which are contained in Ex. M. 2 are not precise. The words " stealthily act " have been used in the charge-sheet as to whether he was about to break open the lock or was in the act of breaking open the lock. An explanation was submitted by the I Party workman as per Ex. M. 3 denying all the charges. The enquiry officer's report is Ex. M. 1, and it being based on a mere suspicion, the worker cannot be punished by termination of service. He relied upon the ruling reported in 1956 (I) LLJ. L.A. Tribunal 453. He further argued that the copy of the report given to the police has not been furnished to the worker, and further that, even on the evidence, the charge is not proved. He further relied upon the rulings reported in 1970 Lab. I.C. Gujarat 35 and 1967 (II) LLJ. 46. He argued that the report of the enquiry officer is perverse as his findings are based merely on suspicion, and hence the dismissal order which is based on such a finding cannot be upheld, on the other hand it is liable to be set aside. He cited one more ruling reported in 1963 (II) LLJ.SC. 392

7. In the reply argument Sri U. P. Mallya contended that the presence of the worker at 2-15 A.M. in the upstairs of the premises of the II Party and his running away without talking to the person sleeping there is clearly indicative of the act that he had come there with the intention of stealing and with no other intention. Therefore, it cannot be said that the report of the enquiry officer is perverse, it being based merely on suspicion. He further relied upon the rulings reported in 1968 F.L.R. (17) Allabad 260 and 1965 (I) LLJ. 462.

8. I have given my anxious consideration to the arguments advanced on either side, an now I proceed to consider the additional issue No. I and the point No. I of the points of dispute together, they being interconnected.

9. Before going into the oral and documentary evidence of the parties it would be better to consider the principles laid down in the rulings cited on either side to be borne in mind while considering the evidence to determine whether the domestic enquiry held against the I Party workman is proper being in accordance with the principles of natural justice or it is vitiated by the infirmities pointed out by Sri H. Umanath Nayak, the learned representative for the I Party, in the course of his argument. *i.e.*, the charge is imprecise, the copy of the report given to the police by the II Party management was not furnished to the worker during the enquiry proceeding, that the charge even on the evidence let in before the enquiry officer in the domestic enquiry is not made out, and that the report of the enquiry officer being based on mere suspicion is perverse and liable to be set aside.

10. In the ruling reported in 1963-64 25 F.J.R. 88, (Sur Enamel And Stamping Works Ltd. *v.* The workmen) which is cited on the side of the II Party it is held that—

> It has been laid down by the Supreme Court in a series of decisions that if an industrial employee's services are terminated after a proper domestic enquiry held in accordance with the rules of natural justice and the conclusions reached at the enquiry are not perverse the industrial tribunal is not entitled to consider the propriety or the correctness of the said conclusions. In a number of cases which have come to Supreme Court in recent months; we find that some employees have misunderstood the decisions of Supreme Court to mean that the mere form of an enquiry would satisfy the requirements of industrial law and would protect the disciplinary action taken by them from challenge. This attitude is

wholly misconceived. An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined—ordinarily in the presence of the employee—in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report. In the instant case the persons whose statements made behind the backs of the employees were used by the enquiring authority were not made available for cross-examination but it would appear that they were not even present at the enquiry. It does not even appear that these reports were made available to the employee at any time before the enquiry was held. Even if the persons who made the reports had been present and the employee given an opportunity to cross-examine them, it would have been difficult to say in these circumstances that was a fair and sufficient opportunity. But in this case it appears that the persons who made the reports did not attend the enquiry at all'

These principles have to be borne in mind while considering the evidence of the parties.

11. In the ruling reported in 1964 (II) LLJ. SC. 139, (Saran Motors Private Ltd., New Delhi *v.* Vishwanath and another) it is held that—

" We have repeatedly poined out that domestic enquiries in industrial relations must be fairly conducted and whenever we are satisfied that any enquiry was not fairly conducted or its conclusions were not supported by evidence, we have unhesitatingly ignored the findings recorded at such an enquiry and held that the Tribunals must deal with the merits of the dispute for themselves; but it is impossible to accept the argument that because a person is somtimes employed by the employer as a lawyor, he becomes incompetent to hold domestic enquiry. It is well-known that enquiries of this type are genrally conducted by the officers of the employer and in the absence of any special individual bias attributable to a particular officer, it has never been held that the enquiry is bad just because it is

conducted by an officer of the employer. If that be so, it is obviously unsound to take the view that a lawyer who is not a paid officer of the employer, is incompetent to hold the enquiry, because he is the employer's lawyer and is paid remuneration for holding the enquiry".

The principles laid down in this ruling are also to be followed in the present case, for Sri P. P. Mallya who has been examined as M.W. 1 is a lawyer and he has acted as an enquiry officer in the domestic enquiry in this case.

12. In the ruling reported in (1960–61) 18 F. J. R. SC 124 (N. Kalindi and others *v.* Tata Locomotive & Engineering Co., Ltd., Jamshedpur) it is held that—

"An order of dismissal made by an employer after proper enquiry into the misconduct of a workman cannot be held to be invalid merely because:

an act of misconduct not mentioned in the charge-sheet was also mentioned in the order of dismissal, where, even leaving out of account this act of misconduct, the employer would have made the order of dismissal on the other acts of misconduct;

(*b*) of error in describing the acts of misconduct when the misconduct with which the workman was charge-sheeted was the one which weighed with the employer; or

(*c*) of clerical errors in the order of dismissal which have not affected the merits of the order".

In (1961-62) 20 F.J.R. Punjab (Ved Luxmi Flour & General Mills Private) Ltd. *v.* Labour Court, Rohtak and another) it is held that

"Where, however, a proper enquiry was held and at no stage of the enquiry any grievance was made by the workman that his evidence was not properly recorded, it would not be open to the Industrial Tribunal to record evidence of witnesses afresh and come to a different finding on the same matter The evidence of witnesses who did not speak the whole truth before the employer would be wholly unworthy of credence. The fourth condition in which an Industrial Tribunal would be justified in interfering with the finding of an employer, *viz.*, "when, on the materials, the finding is completely baseless or perverse", means that the finding of the employer should be baseless or perverse on the evidence recordedly the employer"

In 1963 (II) LLJ SC 392 (Meenglas Tea Estate *v.* Its workmen) dismissing the appeal held that

> "In the circumstances of the case (in regard to the case of ten workmen) the industrial tribunal was right in holding that the domestic enquiries were not fair and hence the industrial tribunal was right in asking the employer to prove the allegations against the concerned workmen *de novo* before it. It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repeal the charge without first making it out against him"

The principle laid down in this ruling will be attracted for directing the II Party to lead evidence on the merits also in this Court in case it is found that the domestic enquiry held is vitiated by the infirmities complained of.

13. In the ruling reported in 1967 (II) LLJ SC 46 (Northern Railway Co-operative Credit Society, Ltd. *v.* Industrial Tribunal, Jaipur and another) it is held that

> "The respondent has not been furnished with concern of materials in support of the charges. The mere fact that he did not appear on the date fixed for enquiry will not satisfy, the requirements of the principles of natural justice that he should have been told of the details of the charges and the material available in support thereof.
> The order passed by the tribunal was fully justified"

14. In the ruling reported in 1970 Lab. IC. Gujarat 35 (Testeels Ltd., Petitioner *v.* N. M. Desai, Conciliation Officer and another, Respondents) it is held that—

> "Both on principle and on authority, every administrative officer exercising quasi-judicial functions is bound to give reasons in support of the order he makes. A conciliation

Officer exercises quasi-judicial function while hearing and disposing of an application by the employer under the proviso to S. 33(2)(b) of the Industrial Disputes Act by which he seeks the approval of the Conciliation Officer for discharging its employee during the pendency of an Industrial Dispute before the said Authority. Hence, he is bound to make an order either giving his approval or refusing it stating reasons in support thereof. Where the order said nothing more than that the officer did not approve of the action of the employer, held, that the order was liable to be quashed.

Examining the question on principle, there are two reasons why every quasi-judicial order must be a speaking order. The necessity of giving reasons flows as a necessary corollary from the rule of law which constitutes one of the basic principles of the Indian Constitutional set-up. The administrative authorities having a duty to act judicially cannot therefore decide on considerations of policy or expediency. They must decide the matter solely on the facts of the particular case, solely on the material before them and apart from any extraneous considerations by applying pre-existing legal norms to factual situations. Now the necessity of giving reasons is an important safeguard to ensure observance of the duty to act judicially. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and excludes or, at any rate, minimises arbitrariness in the decision-making process.

Another reason which compels making of such an order is based on the power of judicial review which is possessed by the High Court under Art 226 and the Supreme Court under Art 32 of the Constitution. These Courts have the power under the said provisions to quash by certiorari a quasi-judicial order made by an Administrative Officer and this power of review can be effectively exercised only if the order is a speaking order. In the absence of any reasons in support of the order, the said courts cannot examine the correctness of the order under review. The High Court and the Supreme Court would be powerless to interfere so as to keep the administrative officer within the limits of the law. The result would be that the power of judicial review would be stultified and no redress being available to the citizen, there would be insidious encouragement to arbitrariness and caprice. If this requirement is insisted upon

then, they will be subject to judicial scrutiny and correction"

There is no dispute with regard to the principles laid down in this ruling.

15. In 1965 (II) LLJ SC 102 (Powari Tea Estate V. Barkataki (M. K) and others) it is held that

> It is necessary to emphasise that domestic enquiries held against industrial employees must conform to the basic requirement of natural justice; and one of the essential requisites of a proceeding of this character is that when the enquiry is over the officer must consider the evidence and record his conclusions and reasons therefor. The fact that the officer who holds the enquiry against a delinquent employee is competent to dismiss him, cannot possibly help to dispense with the making of the report. The report is a document which will have to be closely examined by the industrial tribunal when a dispute, such as the present, is brought before it for its adjudication. Where no such report was made by the enquiry officer, the approach of the labour court in deciding the issue must be held justified and the award made by the labour court setting aside the order of dismissal could be sustained on such ground even though it was not referred to by the labour court as such infirmity could be patent on the record".

These principlee will have to be borne in mind while considering the report of the enquiry officer.

16. Now I proceed to appreciate the oral and documentary evidence of the parties, in the light of the relevant principles enunciated in the rulings cited above regarding which I have expressed my view above that they will have to be borne in mind.

17. M.W. 1 Sri U. Panduranga Mallya, Advocate, deposed that he is the Vice President of the General Managements' Association, Mangalore. The II Party is a member of the said Association. And as such he is representing the II Party in the dispute before this Court. The II Party asked him to conduct a domestic enquiry as per the charge sheet dated 4th August 1969 against the I Party marked as Ex. W. 1. As per the charge-sheet the enquiry was held on 23rd August 1969 at 3 p.m. at the office premises of the Mill. The enquiry proceedings have been produced before this Court and marked as Ex. M. 1. On the basis of the enquiry conducted by him he submitted his report

marked as Ex. M. 1(*a*) dated 30th August 1969. The management has examined three witnesses, *viz.*, 1. A. Raghavan, 2. A. K. Moidu and 3 A. T. Kunhan marked as Ex. M. 1. (*b*), M. 1(*c*) and M. 1(*d*). The worker has examined himself as per Ex. M. 1(e). He did not produce any other witness on his behalf. He has been charged with entering the upstairs room of the office of the II Party at about 2-15 a. m. on 19th July 1969 for the purpose of theft. On the basis of the enquiry he has come to the conclusion that the charge is proved and he recommended that the worker may be discharged from service. Before holding the enquiry the management had given a show cause notice dated 23rd July 1969 marked as Ex. M. 2 to the worker. The explanation given by the worker is also produced and marked as Ex. M. 3 dated 28th July 1969. The enquiry has been conducted in the presence of the worker and he was afforded all the opportunity to cross-examine the management's witnesses and he has taken the opportunity to cross-examine the management's witnesses at length. One of the witnesses M. 1(*b*) was a witness knowing Malayam only a language not known to the I Party workman N. Sanjeeva. Hence the services of an interpreter was availed of. He translated the answers given by him in Tulu a language known to Sri N. Sanjeeva, the I Party workman. The name of the interpreter is Mohamed Kunhi. On the basis of the recommendation the management has discharged the workman as per its order dated 31st August 1969 marked as Ex. W. 2. Sri N. Sanjeeva refused to sign the enquiry proceedings unless the same was read over to him by somebody whom he could trust. He asked him to bring such a person but he said such a person was not readily available and he wanted him to handover the enquiry proceedings to him which he said he would return to him the next day. He has refused his request and noted this in the enquiry proceedings. He admitted in the cross-examination that in the discharge order Ex. M. 2 it is not mentioned that the alleged charge is proved and that as such he was discharged. He has stated that he is not aware whether a copy of the enquiry officer's report was supplied to the workman concerned. He admitted that the original of Ex. W. 3 was received by the II Party and that he has received a copy of the same directly. Ex. W. 4 is the postal acknowledgment regarding the receipt of the letter by the management. He stated that he has gone through Ex. W. 3 dated 22nd August 1969. There is no mention of Ex. W. 3 in the enquiry proceedings M.W. 1.

18. In the Ex. W. 3 which is dated 22nd August 1969 the worker has requested the management that the enquiry should be conducted by an independent person and he made his grievance against Sri U. P. Mallya, Advocate, who was going to conduct the enquiry. Therein it

stated that the alleged charges against him would be conducted by Sri U. P. Mallya, Advocate, who is not connected with the management in any way, and he has no *locus standi* to conduct the enquiry, and that if he is to conduct the enquiry his defence would be prejudiciously affected, since he is an advocate engaged for the purpose. The enquiry should be conducted by an independent person. In this connection he has suggested that an impartial person, such as Labour Officer or the President Officer of the Labour Court or any other independent person may be chosen. It is requested that he may be permitted to bring as an advisor his union representative during the enquiry proceedings. He asked for a copy of the report given by Sri A. Raghavan of Malnad Timber Co. He regretted to note in this application that he has not received the same just then. He further requested that the names of the witnesses who were going to corroborate the alleged charges against him and the copies of the documents that they would like to rely on in the enquiry proceedings may be furnished, and that he may be permitted to submit further explanation or statement at appropriate time if found necessary by him. The record indicates that no reply was given to this application by the II Party management and without paying any regard to this application the enquiry was held on 23rd August 1969 by Sri U. P. Mallya he being appointed as an enquiry officer on behalf of the II Party. No doubt Sri U. P. Mallya has deposed how he is connected with the II Party to conduct the domestic enquiry as per charge-sheet dated 4th August 1969 against the I Party marked as Ex. W. 1, and thereafter to represent the II Party. But the grievance of the I Party contained in Ex. W. 3, that Sri U. P. Mallya, Advocate, was engaged for this purpose and if he were to conduct enquiry his defence would be prejudicially affected, remains unchallenged in the absence of any reply to it by the II Party management. That apart, Sri U. P. Mallya's representing the II Party after holding the domestic enquiry against the worker reflects his interestedness in the II Party. Further in the charge-sheet Ex. W. 1. the name of Sri A. Raghavan, the complainant, is only mentioned, and the names of other two witnesses who were going to be examined by the II Party management were not mentioned. Simply it is stated that the watchman and the unloading people who were in the Mill compound tried to catch him. I think that it was necessary for the II Party, in the light of the rulings reported in 1957 (II) LLJ SC 43 and 1963 (II) LLJ SC 392 to furnish the names of the witnesses to the worker before the domestic enquiry was held and especially when it was demanded by him also in his application Ex.W. 3. The failure to furnish the names of the corroborating witnesses to the I Party workman before the commencement of the domestic enquiry can be taken to be an infirmity sufficient to vitiate the domestic enquiry as it is one of the requirements of the principles of natural justice that

he should have been told of the details of the charges and the material available in support thereof.

19. The worker Sri N. Sanjeeva who has been examined as W.W. 1 has deposed that the enquiry was conducted by Sri U. P. Mallya who was represent in Court that day. He stated that he had attended the enquiry proceedings. He was not told what was the charge against him by the enquiry officer. The enquiry officer did not reply to his letter dated 22nd August 1969 Es. W. 3. He was asked to sign the enquiry papers by the enquiry officer. He was not told the contents of the enquiry proceedings, nor it was read over to him in a language known to him. He has refused to sign the proceedings saying that the proceedings have not been written down as he has said, and he would like to get it read over by a person with whom he can confidence and thereafter he would sign it. He informed the enquiry officer that he would bring his person. He came to know about these things that whatever that has been stated by him during the enquiry was not properly recorded and this information he came to know from his representative Sri H. Umanath Nayak. In cross-examination he stated that the enquiry proceedings were written in English language. Three witnesses, *viz.*, A. Raghavan, A. K. Moidu and A. K. Kunhan were examined by the management at the domestic enquiry. He has cross-examined all the three witnesses for the management. But his main grievance is that he was not told the contents of the enquiry proceedings, nor were they read over to him in a language known to him, and that he refused to sign the proceedings as they were not written down as what he had said, and that he wanted to get it read over by a person with whom he has confidence and thereafter he wanted to sign it. The enquiry proceedings which were concluded on 25th August 1969 are silent that the proceedings were read over to the worker after interpretation in Tulu, a language known to the I Party workman. That being the case, in my opinion, it cannot be said that the domestic enquiry was held failry and properly. Though it is true that the II Party has tried to prove through the evidence of M. W. 1 that the show cause and enquiry notice were served on the I Party workman, and that the witnesses were examined in his presence during the enquiry, that he was given chance to cross-examine them and that he has also examined himself, yet the entire proceedings not being read over and explained to him in his language by a person of his confidence renders the domestic enquiry to be an unfair enquiry. That apart, though it is true, in the light of the ruling reported in 1964 (II) LLJ SC 139 that the employer's lawyer is competent to hold the enquiry against the employees, yet in the present case the holding of enquiry by Sri U. P. Mallya, Advocate, in my view, cannot be regarded to be a fair one, when from the beginning the worker has shown his

apprehension that if enquiry was conducted by him his defence would be prejudicially affected since he has been engaged for the purpose. His bias in favour of the II Party as complained of in the application Ex. W. 3, reply of which was not given by the management, is borne out by his subsequently representing the II Party in this case. Therefore, the enquiry held by him regardless of Ex. W. 3 cannot be said to be a fair enquiry. That apart, the enquiry officer has not given a definite conclusion on the evidence let in before him that the charge levelled against the II Party workman was proved. He has simply shown his suspicion by using the sentence in the report to the effect:

> " The visit at night raises a suspicion that it was for theft of money "

He concluded his report by stating.

> Taking a broad view of the case and the conclusion arrived at by me I recommend that he may be discharged from service

Thus the conclusion arrived at by him is only this, that the visit at night raises a suspicion that it was for theft of money. Because he has not relied upon the confession of Sri N. Sanjeeva made to M.W. 1 at Mercara Hotel, and held that such a confession cannot be believable. Thus the report does not show that the enquiry officer had come to at definite conclusion that the guilt of the I Party workman was proved. He has exaggerated in his examination-in-chief by saying that on the basis of the enquiry he has come to the conclusion that the charge is proved. But I dio not find such a statement anywhere in his report Ex. M. 1'(a). Thus this exaggeration of his itself is an indication of his interestednese in the II Party.

20. Hence on the above grounds, I hold the domestic enquiry to be unfair ans set it aside, and direct the II Party, in the light of the ruling reported in 1963 (II) LLJ SC 392, to lead evidence on merits so that the Court may determine whether the alleged charge is proved or not. Consequently, the additional issue No. 1 in part is decided in the terms that the domestic enquiry held against the I Party workman is not fair and proper. The other part of the additional issue No. 1 and the points of dispute and the other additional issues will be decided after recording the evidence of the parties on the merits of the case. Put up on 29th August 1970 for the evidence of the II Party on the merits of the case. The I Party should also keep present his rebuttal

evidence, if any, on 29th August 1970. Final arguments will also be heard on 29th August 1970.

Mangalore,
25th August 1970.

MOHD. HAMEEDUDDIN KHAN,
Presiding Officer,
Labour Court, Mangalore.

11th December, 1970.

21. This judgment is passed in continuation of the order passed on 25th August 1970, in respect of the part of the additional issue No. 1. The facts of the case have already been narrated in the said order. Therefore, there is no need to reiterate them again here. After taking many adjournments, on 3rd December 1970, the II Party examined one witness on merits as M.W. 2 and closed its evidence. Sri H. Umanath Nayak for the I Party stated that he has no evidence to lead on merits. Arguments of the learned representatives for the parties were heard on 7th December 1970. On 8th December 1970 Sri U. P. Mallya produced the ruling reported in XXIII F.J.R. 171 in support of his argument. By the order dated 25th August 1970 this Court held the additional issue No. 1 in part in the terms that the domestic enquiry held against the I Party is not fair and proper. The other part of the additional issue No. 1 and the points of dispute and the other additional issues were left to be decided after recording the evidence of the parties on merits of the case.

22. In the course of argument Sri U. P. Mallya, Advocate for the II Party, relied upon the evidence given by the witness M.W. 2 before the domestic enquiry stating that he has made a contrary statement in the Court in the examination-in-chief as regards the light being on and the light being off in the cross-examination, and the umbrella being left by the delinquent at the upstairs while he was sleeping whereas in the domestic enquiry he has stated that the door was open, the light was on and the umbrella was left near the stair-case. However, he argued that one thing is established from the evidence of this witness M.W. 2 that a person had entered the upstairs that night when he was asleep there. He argued that even if it is taken for granted that on account of lapse of memory this witness M.W. 2 has made an inconsistent statement in Court, this fact however can be held established from his evidence that a person had entered the upstairs that night. He stated that the other two corroborating witnesses who were examined during the domestic enquiry could not be produced on behalf of the

II Party before this Court as they have left the service of the II Party and their whereabouts are not known to the II Party. He relied upon the domestic enquiry only and not on the evidence given by M.W. before this Court. In support of his argument that the misconduct of the I Party is proved he relied upon the ruling reported in XX F.J.R. Punjab 469 and XXIII F.J.R. SC 171. On the other hand, Sri H. Umanath Nayak, the learned representative for the I Party, argued that the II Party has failed to establish the guilt, *i.e.*, the misconduct of the I Party workman. Therefore, he is entitled to reinstatement with back wages and continuity of service. He argued that, as this Court has held already that the domestic enquiry is not proper and fair, the domestic proceeding cannot now be taken into consideration to hold the alleged misconduct proved.

23. I have given my anxious consideration to these arguments of the learned representatives for the parties. First I have to consider whether the charge against the I Party workman with regard to his entering the upstairs room of the office of the II Party at about 2.15 A.M. on 19th July 1969 for the purpose of theft is proved or not. This is to be noted here that the worker was examined already in connection with the additional issue No. 1, and the relevant portion of his evidence has been discussed in the order dated 25th August 1970. I have already remarked in the Order aforesaid that the enquiry Officer has not come to a definite conclusion on the evidence let in before him, that the charge levelled against the I Party was proved, and that he has simply shown his suspicion by using the sentence in the report to the effect, "The visit at night raises a suspicion that it was for theft of money". This is to be remarked here that this Court has held in the aforesaid order that the report *i.e.*, the report of the enquiry officer does not show that the enquiry officer has come to a definite conclusion that the guilt of the I Party workman was proved. Discussing at length the evidence and materials or record this Court *vide* Order dated 25th August 1970 has held the domestic enquiry to be unfair and improper and has set in aside and directed the II Party in the light of the ruling reported in 1963 (II) (L) SC 392, to lead evidence on merits so that the Court may determine whether the alleged charge was proved or not.

24. In the ruling reported in XXIII (1962-63) F.J.R. SC 171 (Ritz Theatre (Private) Ltd *v.* Its workmen) it is held that—

> If the tribunal comes to the conclusion that no proper enquiry had been held at all the whole issue would be at large before the Tribunal and it would be open to the employer

to adduse additional evidence and satisfy the Tribunal that the dismissal was justified"

This view does not express the opinion of the Supreme Court that the Labour Court or Tribunal should believe the evidence given in the domestic enquiry only overlooking the infirmity of the evidence adduced as additional evidence in court after the domestic enquiry having been held improper and unfair. That apart, whatever evidence was let in during the domestic enquiry by the II Party management was not sufficient even to convince the enquiry officer himself to come to a definite conclusion as to the I Party workman having entered the upstairs with an intension of theft. Whatever view the enquiry officer has expressed is only a suspicion, which in my view cannot take the place of proof of the guilt of the I Party workman. That apart, the evidence of M.W.2 which was given in the domestic enquiry does not show that he had identified the person who entered the upstairs of the II Party's office as the I Party workman. So even if his evidence whatever he has given during the domestic enquiry is taken into consideration discarding his testimony given in Court, still the alleged misconduct of the I Party workman cannot be held proved. The II Party has very conveniently made its representative state in Court that the other two corroborating witnesses left the service of the II Party and their whereabouts are not known and so they could not be produced in Court. If it were a fact that these corroborating witnesses have left the service of the II Party and their whereabouts are not known and for that reason they could not produced, then there was no reason for the proprietor of the II Party or any witness on behalf of the II Party to fight shy of coming to the witness box to depose on oath the fact of the corroborating witnesses having left the service of the II Party and their whereabouts not being known. In the absence of such evidence, the mere statement of the representative of the II Party that the two corroborating witnesses having left the service of the II Party and their whereabouts not being known they could not be produced in Court, cannot be given any credence and acted upon from the evidence of M.W.2 who is an important witness in this case the alleged misconduct of the I Party workman is not proved, as this witness in cross-examination has clearly admitted that he could not recognise him (*i.e.*, the person whom he saw enter the upstairs of the II Party's office), as it was night. He further stated that he saw him inside the room, and that at the time the person caught hold of his hand the doors were open. There was no light when that person had entered the room at the first floor where he was asleep. Even if it is taken for granted, in view of his evidence, that a person had entered the upstairs of the office of the II Party that night, that fact itself cannot, in my view, be sufficient to

draw an inference that person was none other but the I Party workman. In the ruling reported in XX (1961-62) F.J.R. Punjab 469 (Ved Luxmi Flour & General Mills (Private) Ltd. *v.* Labour Court, Rohtak and another) it is held that-

> "The evidence of witnesses who did not speak the whole truth before the employer would be wholly unworthy of credence."

If this principle is followed, then in view of the discrepancies found in the statement of M.W.2 made in this Court and in his statement made in the domestic enquiry, which have been pointed out by Sri U. P. Mallya in the course of his argument, none of the statements of this witness made during the domestic enquiry and in the Court can be said to be worthy of any credence. Both the statements will have to be discarded from consideration. If the evidence of this witness is discarded from consideration, then there will be no evidence to substantiate the alleged misconduct of the I Party workman. Hence the II Party has miserably failed to prove the alleged misconduct against the I Party workman. That being my conclusion, the point No. 1 of the points of dispute will have to be disposed of against the II Party and in favour of the I Party holding that the management of M/s. Mysore Timber Saw Mills, Kulsekar, Mangalore is not justified in discharging Sri N. Sanjiva, Band Saw Operator, with effect from 31st August 1969. Hence this will be my answer to the point No. 1 of the points of dispute.

25. Now I turn to the alternative part of the additional issue No. 1. Though the I Party workman who has examined himself ay W.W. 1 has tried to give evidence with regard to his victimisation bs the II Party, yet he has not stated either in his examination-in-chief or in cross-examination that he was victimised for his trade union activities by way of his discharge from service. He deposed that the workers get the benefits of employees' State Insurance Act, Provident Fund, Earned leave wages as per the Factories Act, but bonus is not given to them by the II Party. The contribution of the employer for the E.S.I. and Provident Fund was not contributed by the management but it was deducted from the salary of the workers. He tried to enroll the workers of the II Party with the I Party union. He organised a meeting of the workers. One Vishwanath, he himself and Veeran Kutty an employee of the II Party, one Moideen and others were present at the meeting. They decided to lodge a complaint to the Provident Fund Authority regarding the contributions to be made by the employer. Now the contributions is being made by the employer, *i.e.*, employer's contribution. He has stated that a move was made by the management to convert the workers of the II Party as workers working under the contractor. The workers concerned informed him, *i.e.*, this

witness, that an agreement was signed between the worker and the management. But these facts in my view, do not lead to the only conclusion that the II Party is guilty of victimisation on account of discharging the I Party workman. That apart, this alternative part of the additional issue No. 1 does not survive for consideration in view of the finding on the point No. 1 of the points of dispute. Hence no finding is given on the alternative part of the additional issue No. 1.

26. The additional issue No. 2 with regard to the punishment of termination of service of the I Party workman being excessive, and not being *bonafide* also does not survive for consideration, in view of the finding on the point No. 1 of the points of dispute. So it is also not considered.

27. The point No. 2 of the points of dispute now comes for consideration. In view of the finding on the point No. 1 of the points of dispute, the I Party workman is entitled to reinstatement with continuity of service. But with regard to back wages, I have to Consider now whether back wages can be granted to him or if so, to what extent. W. W. 1 in his examination-in-chief at page 3 in the last lines has stated that he is not working anywhere now. He tried for an employment but he could not get one. The only suggestion made to him in cross-examination with regard to his employment now, was denied by him by replying that it is not true to suggest that he is employed now. In the recent ruling reported in XXXVII (1970) F. J. R. Bombay 412 it is held that—

> When making an award reinstating a workman who has been wrongfully dismissed by the employer, the Labour Court cannot award full back wages unless the workman proves that he remained unemployed, in spite of his efforts to minimise his loss, during the period of his dismissal".

The workman in the present case has stated on oath in the last lines of his examination-in-chief that he is not working anywhere now, and that he tried for employment but he could not get one. I do not find any reason to disbelieve this version of his, and he has also denied the suggestion made to him in cross-examination with regard to his being employed at present. Contrary to this version of his there is no evidence to establish that he is employed now or from the date of his discharge from service. In these circumstances, in my view, the I Party workman will be entitled to full back wages from the date of his discharge, *i. e.*, from 31st August 1969. Hence my answer to the second point of dispute will be that the I Party workman Sri N. Sanjeeva, Band Saw Operator, is entitled to reinstatement with continuity of service and full back wages from 31st August 1969.

28. Now remain the additional issue No. 3 as to " what award " In view of the findings on first and second points of dispute and the first part of the additional issue No. 1 I make the following award :

AWARD

The reference is answered in the terms that the management of Mysore Timber Saw Mills, Kulshekar, Mangalore is not justified in discharging Sri N. Sanjiva, Band Saw Operator, with effect from 31st August 1969, and that the said workman is entitled to reinstatement with continuity of service and full back wages with effect from 31st August 1969. The II Party shall reinstate the said workman with continuity of service in his original post within one month from the date of publication of this award in the Official Gazette of the Government of Mysore, and pay him his full back wages from 31st August 1969 within one month from the date of his reinstatement. In the circumstances of this case, the parties are directed to bear their respective costs of this reference.

Mangalore

11th December, 1970.

MOHD. HAMEEDUDDIN KHAN,
Presiding Officer,
Labour Court, Mangalore.